

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 4,	:	
	:	
Charging Party,	:	<u>U.L.P. No. 01-06-321</u>
	:	
v.	:	
	:	
CITY OF NEWARK, DELAWARE,	:	
	:	
Respondent.	:	

Probable Cause Determination

The City of Newark, Delaware (“City”) is a public employer within the meaning of §1602(l) of the Police Officers and Firefighters Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986). ¹

The Charging Party, Fraternal Order of Police Lodge No. 4 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(g). ² The FOP is the exclusive bargaining representative of the bargaining unit of Police Officers in the ranks of Police Officer, Corporal, Master Corporal, Sergeant, Lieutenant and Captain employed by the City of Newark. 19 Del.C. §1602(h). ³

¹ “Public employer” or “employer” means the State, or political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which (1) upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title, (2) hereafter elects to come within this chapter, or (3) employs 25 or more full-time employees. For the purposes of paragraph (3) of this subsection, “employees” shall include each and every person employed by the public employer except: (A) any person elected by popular vote; and (B) any person appointed to serve on a board or commission. 19 Del.C. §1602(l).

² “Employee organization” means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. 19 Del.C. §1602(g).

³ “Exclusive bargaining representative” or “exclusive representative” means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit. 19 Del.C. §1602 (h).

On June 28, 2001, the FOP filed this unfair labor practice charge alleging the City violated §1607, Unfair Labor Practices subsection (a)(2) and (a)(5) of the POFERA, which provides:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

On July 5, 2001, the City filed its Answer to the Charge, including new matter. The City also filed a Motion to Dismiss the complaint and a Brief in Support of its Motion to Dismiss on July 5, 2001.

The FOP filed a Brief in Opposition to the City's Motion to Dismiss on July 17, 2001, and the City responded by filing a Reply Brief in Response to the Union's Brief in Opposition to Motion to Dismiss on July 20, 2001.

DISCUSSION

The factual allegations contained in the Charge filed by the FOP are not disputed by the City. The City and the FOP are parties to a collective bargaining agreement which expired on March 31, 2001. The parties have been engaged in negotiating a successor agreement, and met on June 21, 2001, for a bargaining session with a PERB appointed mediator. During the June 21, 2001, mediated bargaining session, the City made a proposal which was unacceptable to the FOP.

The FOP scheduled a general membership meeting for Wednesday, June 27, 2001. On that morning, the City "caused a letter, which was addressed to John A. DeGhetto, President [*sic*] of the Union, to be separately delivered to every member of the bargaining unit." Charge ¶ 8. The letter, a copy of which was attached to the Charge, read:

June 27, 2001

John A. DeGhetto, Jr.
Sergeant
Newark Police Department

Dear John:

As you know by now, the City and the negotiating committee for your union have failed to reach an agreement on a new contract. I am writing this letter to ensure that each of you is aware of and understands the City's offer.

1. Retiree and spouse health insurance – Each retiring employee will be offered a choice of two options at normal retirement:
 - A. The City will pay 100% of the health insurance premium for up to 15 years after the employee's retirement. The City will pay \$8 per month multiplied by the employee's years of service as a police officer toward the spouse's premium for up to 15 years.
 - B. The City will pay the premium rate in effect for the employee as of the employee's retirement date for the life of the retiree. The City will pay \$8 per month multiplied by the employee's years of service as a police officer toward the spouse's premium for life. Coverage commences after the employee/retiree reaches age 55 and retires from employment as a police officer.
2. Effective January 1, 2002, the method for calculating Flex Points will be revised. If this change were implemented at today's premium rates, it would reduce the number of flex points from 126 to 91. This would result in a maximum monthly payroll deduction, at today's rates of \$34.32. If your selections cost less than 91 points, you would not be required to make a payroll deduction.
3. Effective January 1, 2002, the copay amounts for most health insurance benefits will increase from \$5 to \$10. The copay amount for a 30 day supply of a generic drug will increase from \$5 to \$7.50 and for most brand names from \$5 to \$10.
4. Annual salary rates at each step will increase as follows:

April 1, 2001	3.25 %
April 1, 2002	3.25 %
April 1, 2003	3.50 %
April 1, 2003	3.50 %
April 1, 2003	4.00 %

This proposal is consistent with the agreement the City recently reached with the Employees Council. The only exception is the first retirement health insurance option which was offered to reflect the earlier age at which you may retire.

I believe that this is a reasonable and fair offer. It is my sincerest hope that you will give it your serious consideration.

Sincerely,
/s/ Carl F. Luft
City Manager

The FOP alleges that “by addressing the letter to the Union President and then placing a copy in the office mailbox of each member of the bargaining unit, the City was communicating directly with each member of the bargaining unit. In taking this action of sending the letter, which repeated the City’s rejected offer, directly to bargaining unit members, the City was circumventing the Union.” Charge, ¶9.

The FOP asserts that by communicating directly with the bargaining unit members, the City was seeking to place the FOP in a bad light, was seeking to negotiate directly with the employees, was seeking to raise doubts as to whether the FOP would disclose the City’s offer to its membership, and was circumventing its obligation to bargain in good faith in violation of 19 Del.C. §1607(a)(2) and (a)(5).

Article V of the Rules and Regulations of the Delaware Public Employment Relations Board provides, in relevant part:

5.6 Decision or Probable Cause Determination

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred.

The City does not dispute the factual allegations which are contained in paragraphs 1 – 8 of this Charge.

The PERB has previously addressed the standard to be applied in evaluating the effect of an employer’s direct communication with bargaining unit employees during the course of negotiations in Paul v. NCCVT Bd. of Education, Del.PERB, ULP 88-12-029, I PERB 395 (1989). In that case, the PERB examined the communication from the President of the New Castle County Vocational Technical School District Board of Education to the professional teaching staff, following their rejection of a tentative agreement, stating:

Contrary to the allegations contained in the Charging Party’s complaint, the record contains no basis for concluding that the content of [the Board President’s] letter implies that the bargaining unit officers did not supply the employees with accurate information concerning the tentative agreement. Nor is it biased and misleading. The letter contained no new offers nor did it attempt to demean the position of the bargaining representative. It is to be expected that the employer would present data

supporting its position. If the Association considered that a response was necessary, it was free to do so as it deemed appropriate within the confines of the law.

... Absent the presence of additional circumstances indicating a breach of the duty to bargain in good faith, there is no basis upon which to conclude that the November 23rd letter from Board President Slabach to the teaching staff constituted a violation of 14 Del.C. §4007(a)(2), as alleged. NCCVT, I PERB @ p. 401.

This holding is binding in the present situation.

The City Manager's June 27 letter to the Union President speaks for itself. There is no allegation that the letter does not factually set forth the City's June 21, 2001, offer to the FOP or that this was not the specific offer which was rejected by the FOP during that negotiation session. The FOP was contemporaneously provided with a copy of the letter and had the opportunity to respond to it at its general membership meeting that afternoon.

There is nothing on the face of this letter which could reasonably be considered a promise of benefit or a threat of reprisal. It does not urge the reader to take any action nor does it question the honesty or effectiveness of the FOP. In fact, as evidenced by FOP President DeGhetto's letter to the City Manager following the FOP general membership meeting, the membership also "unanimously rejected the recent proposal from the City, which was outlined in [the] letter dated June 27, 2001, to each of our members.

DECISION

Considered in the light most favorable to the Charging Party, the pleadings do not provide a basis to find probable cause to believe that the City violated its duty to bargain in good faith or dominated, interfered with, or assisted in the existence or administration of the FOP (in violation of 19 Del.C. 1607 (a)(2) and/or (a)(5)) when the City Manager's July 27, 2001, letter was delivered directly to bargaining unit employees.

WHEREFORE, this unfair labor practice charge is hereby dismissed.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.
Charles D. Long, Jr., Executive Director
DEL. PUBLIC EMPLOYMENT RELATIONS BD.

DATED: 23 August 2001